

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
ATLANTA BRANCH OFFICE

NATIONAL ASSOCIATION OF LETTER
CARRIERS (UNITED STATES POSTAL
SERVICE)

and

Case 18–CB–4819

STEVE PERRY, an Individual

A. Marie Simpson, Esq., for the General Counsel.
Oriana Vigliotti and Peter D. DeChiara (on brief),
Esqs., for the Respondent.

DECISION

Statement of the Case

GEORGE CARSON II, Administrative Law Judge. This case was tried in Mason City, Iowa, on October 6, 2009, pursuant to a complaint that issued on August 6, 2009.¹ The complaint alleges that the Respondent Union failed and refused to respond to an employee's request for information concerning the procedure and open period for revoking the employee's dues check off and failed to give effect to the effort of the employee by continuing to receive and retain his dues in violation of Section 8(b)(1)(A) of the National Labor Relations Act. The Respondent's answer denies any violation of the Act. I find that the Respondent did not violate the Act, and I shall recommend that the complaint be dismissed.

On the entire record, including my observation of the demeanor of the witnesses and after considering the briefs filed by the General Counsel and the Respondent, I make the following

Findings of Fact

I. Jurisdiction

The Respondent admits, and I find and conclude, that the Board has jurisdiction over the United States Postal Service pursuant to Section 1209 of the Postal Reorganization Act, 39 U.S.C. Section 1209, that the National Association of Letter Carriers, the NALC or the Union, is a labor organization within the meaning of Section 2(5) of the Act, and that the Board has jurisdiction over this matter.

¹ All dates are in 2009 unless otherwise indicated. The charge was filed on June 10.

II. Alleged Unfair Labor Practices

A. Background

5 This case arises because of a personal dispute between Charging Party Steve Perry and Peter Nettleton, President of Branch 471 of the NALC. Both Perry and Nettleton are letter carriers with assigned routes in Mason City, Iowa. Perry had been a union steward, serving two two-year terms beginning in 1998 and 2000, respectively. He was asked to resign that position in 2001 following an incident in which Nettleton, who had been elected President of Branch 471
10 in 2000, criticized an action that Perry had taken as a steward. Perry refused to resign as a steward but claims that Nettleton “took away all my duties.” He thereafter resigned from the Union and cancelled his dues deduction. He rejoined the Union in 2008. In April 2009, Perry became upset with Nettleton because of incidents concerning mail delivery to Perry’s home which was on Nettleton’s route.

15 Employees who desire the Postal Service to deduct union dues from their pay may execute a Postal Service form, PS Form 1187, Authorization for Deduction of Dues. The authorization is irrevocable for a period of one year and remains in effect for successive years unless “written notice” of revocation is given by the employee. The PS Form 1187 states the
20 foregoing as well as the window period for revocation, no more than 20 days and no less than 10 days before the anniversary date of the employee’s authorization for the deduction of dues, a 10 day window period. When Perry rejoined the Union in 2008, he executed a PS Form 1187 that is dated May 13, 2008.

25 Employees who wish to cease the deduction of their dues execute a PS Form 1188, which is obtained from the Postal Service. President Nettleton’s uncontradicted testimony establishes that the Union does not have copies of the PS Form 1188. See also *Postal Service*, 302 NLRB 701, 705 (1991). Upon execution by the employee, PS Form 1188 is submitted to the installation head at the facility at which the employee works and by certified mail to the national
30 office of the Union. The foregoing procedure is set out in Section 925.122(b) of the Employee and Labor Relations Manual, the ELM. Following his previous resignation from the Union, Perry timely executed a PS Form 1188 on January 31, 2003, which resulted in the cessation of deduction of his union dues.

35 Sections 925.122(e) and (f) of the ELM provide that the APWU (American Postal Workers Union) and the NAPWS (National Association of Postal Workers), respectively, process PS Form 1188s submitted by members of those labor organizations. The NALC is not mentioned in Section 925.122, and, at the hearing, counsel agreed that the Postal Service processes PS Form 1188s filed by members of the NALC.

B. Facts

45 On April 8, Perry met with Nettleton and Scott Pardoe, the postmaster at Mason City, regarding his complaints about the manner in which Nettleton delivered mail to his home. In that meeting he stated that he “didn’t want t be a part of the Union any longer.” Perry did not request that either Nettleton or Pardoe provide him with any information relating to resignation or to the procedure for canceling the deduction of his union dues.

Also on April 8, Perry wrote the NALC National Business Agent for Region 5, Mike Weir. The first three sentences of the letter state:

Please send me a form to cancel my union dues. I also need the address and date to

send it. I have to make a statement about the type of mail service I get at my home from the branch president Pete Nettleton.

The remainder of the letter addresses his complaints regarding Nettleton. As pointed out in the brief of the Respondent, Perry made no request relating to the procedure for canceling his dues deduction, a procedure with which he was familiar insofar as he had cancelled his dues deduction in 2003.

With regard to the cancellation of his dues deduction in 2003, following his previous resignation from the Union, Perry initially testified that “[s]omebody in the local office,” referring to the Postal Service, provided him with the information, but he then modified his response stating that he did not recall whether it was “someone in the Union or someone in the office.” Consistent with his initial response, I find that Perry contacted the Postal Service, not the Union, for information regarding the procedure that he followed in 2003. Perry testified that he “didn’t know” of any changes in the procedure that he followed in 2003. President Nettleton testified that there have been no changes, and there is no contrary evidence.

On April 10, Weir responded to Perry, writing the following:

I do not have any forms for canceling Union dues. I would recommend that you contact your Supervisor or Postmaster in regard to this matter.

Perry did not tell Nettleton that he had written Weir. Weir informed Nettleton of the letter and told him that he had replied and had referred Perry to his supervisor or the postmaster.

Following receipt of Weir’s April 10 reply, Perry spoke with Postmaster Pardoe who informed him the he did not have a form. Perry initially testified that he spoke with Pardoe again “[o]n a couple of occasions.” Notwithstanding that answer, when asked whether he went “back a second time after you asked him for the form and he didn’t give it to you,” Perry answered, “No.” Subsequent testimony establishes that the “couple of occasions” to which Perry referred were in late May and early June.

On April 30, Perry wrote Nettleton stating:

This is to inform you that I am canceling my authorization for deduction of union dues. I am doing this because of the type of delivery service you have provided me as the letter carrier to my house.

The rest of the letter addresses Perry’s complaints. Perry placed the letter Nettleton’s box, handed a copy of the letter to Postmaster Pardoe, and left a copy for the secretary of Branch 471. The secretary provided Perry with a copy of his PS Form 1187, a document that Perry already possessed. Perry claims that he wrote the foregoing letter because he knew it “was near the window of opportunity” for the cancellation of dues “according to “what I had from that 1187,” the form he had executed on May 13, 2008.

Nettleton explained that he did not respond to the letter because, as stated in the letter, Perry was simply informing him of what he was doing. The letter requests no information.

Perry’s dues continued to be deducted, and, on May 26, he recalls asking Postmaster Pardoe “what the deal was.” The record reflects no response by Pardoe to that inquiry. Perry made no request of the Union.

On June 10, despite Postmaster Pardoe's failure to provide him with a form or respond to him on May 26, Perry filed the charge herein only against the Union.

5 On June 11, Perry again spoke with Postmaster Pardoe. On this occasion, Pardoe stated that he would look into it. On June 11, Pardoe sent an email to Caroline Romore at the Postal Service office in Des Moines, Iowa, stating that he had "sent some info to Greensboro for an employee who wants to cancel his union dues and have not heard anything. Was this the right thing to do?" Romore responded by email the same date stating that the employee "should call 1-877-477-3273, option 5." The foregoing number is the telephone number of the Postal Service HR Shared Service Center located in Greensboro, North Carolina.

15 Postmaster Pardoe gave Perry a copy of the exchange of emails on June 11. Perry called the number and was informed by a postal employee named Natalie of the necessity for submitting a PS Form 1188, that he could get the form "online," i.e. off of the Postal Service website, and that his anniversary date was actually June 6. A notation by Perry on the copy of the email that Pardoe gave him states, "I was not given PS 1188." He called again and was told that he had "missed the chance" to cancel his dues deduction.

20 Perry thought his anniversary date was May 13, 2008, the date on his PS Form 1187. It appears that the discrepancy resulted from the date that the Postal Service received the PS Form 1187. See *Postal Service*, 302 NLRB at 705. If Pardoe had provided Perry with a PS Form 1188 and he had submitted it, he would have learned that the Postal Service considered his anniversary date to be June 6 and could have timely resubmitted his revocation.

25 On June 15, Perry wrote the Postal Service HR Shared Service Center, the Greensboro location to which Postmaster Pardoe "had sent some info." Perry's letter, *inter alia*, states:

30 In April I notified the postmaster and the branch president that I wanted to cancel my union dues. I did this first verbally and was not given any form and then in writing after I contacted the union business agent for the information I needed to cancel the dues and was not given anything. He [sic] local branch secretary only gave me a copy of the 1187. I was not told that I needed a form 1188 until June 12 when it was too late to submit it.

35 Contrary to the foregoing statement, Perry did not, in April, notify the postmaster and the branch president that he "wanted to cancel my union dues." On April 8, Perry stated that he "didn't want t be a part of the Union any longer." His letter to Nettleton dated April 30 requests no information. It states, "I am canceling my authorization for deduction of union dues."

40 Perry also states that he "was not told that I needed a form 1188 until June 12 when it was too late to submit it." The foregoing statement was technically correct insofar as June was when Natalie told Perry that he needed a PS Form 1188. But the statement is misleading. Perry never asked what form he needed. Perry already knew that he needed a form. His April 8 letter to National Business Agent Weir requests that Weir send him "a form to cancel my union dues." Upon receiving Weir's response, he asked Postmaster Pardoe for a form. He had submitted a PS Form 1188 when canceling his dues deduction in 2003.

45 On June 19, the Shared Service Center replied to Perry's letter of June 15 stating that "the only way the HRSSC can cancel your NALC dues at this point is to receive a letter of release from the NALC's National office (not local)." The foregoing is consistent with Section 925.122(b) of the ELM which provides that time limitations "can be waived only by the union." Perry made no attempt to obtain a letter of release from the NALC's National office.

C. Analysis and Concluding Findings

The complaint, in subparagraph 6(a) alleges that, since April 10, the Union “failed and refused to respond to an employee’s request for information concerning the procedure and open period for revoking the employee’s dues check off.” Subparagraph 6(b) of the complaint alleges that, since May 17, the Union “failed and refused to honor or give effect to an employee’s effort to revoke the employee’s dues check off.” Subparagraph 6(c) alleges that the Union has “received, accepted, and retained” the dues deducted “by continuing to give effect to a check off authorization after the employee attempted to revoke dues check off.”

With regard to subparagraphs 6(b) and (c), the Union did not fail or refuse to give effect to Perry’s effort to revoke his check off authorization. The Postal Service, not having received a timely revocation, continued to deduct dues. The Union did receive, accept, and retain Perry’s dues because the Postal Service continued to give effect to the check off authorization.

The issue herein is whether the Union “failed and refused to respond to an employee’s request for information concerning the procedure and open period for revoking the employees dues check off.” The only request that Perry made of the Union was in his April 8 letter to Weir that requests “a form to cancel my union dues ... [and] the address and date to send it.”

On April 10, Weir timely responded that he had no forms and that Perry should contract his supervisor or postmaster. As pointed out in the brief of the Respondent, the April 8 letter makes no request regarding procedure. Perry knew the procedure for dues revocation having done so in 2003 when he received the information regarding cancellation from “[s]omebody in the local office,” not the Union. Perry’s letter does not specifically request information regarding the applicable open period, the “window of opportunity” that he was aware was “near.” Weir’s referral of Perry to his supervisor or postmaster was appropriate. The postmaster as installation head is the individual to whom the dues cancellation form is submitted.

In her brief, Counsel for the General Counsel refers to Perry’s letter of April 30 in which he states, “I am canceling my authorization for deduction of union dues.” Counsel argues that Nettleton, having read “this unequivocal statement of Perry’s intent ... failed to inform Perry that he needed to complete a Form 1188.” Counsel does not explain how Nettleton was to somehow infer that the foregoing declaratory sentence regarding the action that Perry was taking constituted a request for information. The letter makes no request for information.

Unlike the situation in *Hughes Aircraft Co.*, 164 NLRB 76 (1967), cited in the brief of the General Counsel, the Union herein did not “intentionally mislead” Perry in any way.

The General Counsel, citing *Electrical Workers, Local 66*, 262 NLRB 483, 486 (1982), argues that Weir and Nettleton “repeatedly frustrated Perry’s attempt to revoke his dues-checkoff authorization.” I disagree. Unlike the situation in *Electrical Workers, Local 66*, supra at 484, the Union did not refuse to sign a necessary document, direct the employee to get out of the office, or refuse to deal with the employee while telling him to “go to hell.” Perry made no request of Nettleton. Perry made one and only one request of information from the Union, his letter of April 8 to Weir. The Union does not maintain PS Form 1188s. Insofar as Weir had no forms, he referred Perry to the managers of the entity through which PS Form 1188s are obtained and which processes PS Form 1188s submitted by members of the NALC. Postmaster Pardoe failed to provide Perry with a PS Form 1188. As aptly stated by Counsel for the Respondent at the hearing, “[T]he Postal Service screwed up.” Perry never recontacted Weir. He did not inform Weir that Pardoe had not provided him with the form.

The Board, in *Letter Carriers Branch 529*, 319 NLRB 879, 881 (1995), a case in which a union refused to provide an employee with copies of grievance forms that were in its possession, set out the obligation of the union as follows:

5 The fundamental general principles that govern this case have recently been restated
and affirmed by the Board in *Letter Carriers Branch 6070 (Postal Service)*, [316 NLRB
235 (1995)]. A union owes all unit employees the duty of fair representation, which
extends to all functions of the bargaining representative. When a union's conduct toward
10 a unit member is arbitrary, discriminatory, or in bad faith, it breaches its duty of fair
representation. But a union must be allowed a wide range of reasonableness in serving
the unit employees, and any subsequent examination of a union's performance must be
"highly deferential." Mere negligence does not constitute a breach of the duty of fair
representation. And a union's conduct is arbitrary only if, in light of the factual and legal
15 landscape at the time of the union's actions, the union's behavior is so far outside a wide
range of reasonableness as to be irrational. [Footnotes omitted.]

In this case, the PS Form 1188s were not in the possession of the Union. Weir rationally
responded to Perry that he had no forms and referred Perry to his supervisor or postmaster.
The referral to the appropriate managers of the Postal Service was not arbitrary, discriminatory,
20 or in bad faith. It was not "so far outside a wide range of reasonableness as to be irrational." PS
Form 1188s are obtained through the Postal Service, and the Postal Service processes PS
Form 1188s filed by members of the NALC. See *Postal Service*, 302 NLRB at 701 and 705,
supra. As argued in the brief of the Respondent, it was "prudent of Weir to refer Perry to
management ... since USPS administers the procedure."

25 The Union was unaware that Perry was not satisfied with the response he received from
Weir. Perry never informed Weir that Postmaster Pardoe had been unresponsive or that he
needed the information he initially requested. Notwithstanding the failure of Pardoe to provide
him with a form when he initially requested one, Perry made no further attempt to obtain a form.
30 When asked whether he went "back a second time" after he asked Pardoe for the form, Perry
answered, "No." Perry did not inform Weir that he had experienced any difficulty in obtaining the
form. In the absence of any further communication from Perry, Weir had no need to make a
further response. So far as he knew, Perry "was satisfied with the information provided. No
renewed request for information was made." *AT&T Corp.*, 337 NLRB 689, 691 (2002).

35 Perry filed the charge herein on June 10. Although the charge is filed only against the
Union, it states, "On April 30, 2009, I notified both my postmaster and the union president that I
wanted to cancel my union dues, but they have failed to represent me because the dues are still
being taken out of my paychecks." [Emphasis added.] Perry's letter of April 30 to Nettleton
40 makes no statement about wanting to cancel his dues deduction. The letter informs Nettleton of
the action that Perry is taking: "I am canceling my authorization for deduction of union dues."
Perry never informed Weir or Nettleton that he felt that the Union had "failed and refused" to
represent him. His letter of April 30 does not state that he was dissatisfied with Weir's response
referring him to Postal Service management nor does it report that Postmaster Pardoe had
45 been of no help and that Perry was encountering difficulty in obtaining the appropriate form, a
PS Form 1188, the same Postal Service form he had executed on January 31, 2003.

In *Postal Service*, supra at 702, the Board held that the union's referral of an employee
"to the appropriate postal bulletin" provided "the information necessary to process the [dues]
revocation." Perry had previously cancelled his dues deduction and was unaware of any
changes to that procedure. Perry, a former steward, was familiar with the ELM. He
acknowledged using the internet, but he claimed that he "never used it" with regard to contracts

or the ELM. A link to the ELM is available on the Postal Service website. The Union, rather than referring Perry to the internet or the ELM, referred him to the postmaster, the individual to whom the PS Form 1188 is to be submitted. So far as the Union was aware, Perry had obtained that form and was, as stated in his April 30 letter, canceling his authorization for dues deduction.

5 Perry did not make a second request of Pardoe in order to obtain that form that he knew he must submit as confirmed by his actions in 2003 and his request of Weir for the “form.” He did not inform Weir or Nettleton that Pardoe had been unresponsive and request that either of them assist him. He did not make any additional request.

10 After Perry learned that his postmaster’s effort on his behalf had been ineffective, he wrote the Service Center and was informed that “the only way the HRSSC can cancel your NALC dues at this point is to receive a letter of release from the NALC’s National office (not local).” The foregoing is consistent with Section 925.122(b) of the ELM which provides that the time limitations regarding cancellation of dues deductions “can be waived only by the union.”
15 Perry made no attempt to obtain a letter of release from the NALC’s National office.

In order to establish that a Union has violated Section 8(b)(1)(A) of the Act, the General Counsel must establish that the Union restrained or coerced employees in regard to their Section 7 rights. Denial of, or refusal to provide, information restrains employees insofar as it
20 breaches the union’s duty of fair representation. In this case there was no denial or refusal. Business Agent Weir made a timely response to Perry, and Perry never informed him that he considered the response to be inadequate. Perry made no request of information to President Nettleton. He did not inform Business Agent Weir that his response had been ineffective insofar
25 as Postmaster Pardoe had not assisted him, and he made no renewed request of Weir. The actions of the Union were not arbitrary, discriminatory, in bad faith, or irrational and they did not coerce Perry “in the exercise of the Section 7 right to revoke checkoff authorizations.” See *Postal Service*, at 702, 703, *supra*. I shall recommend that the complaint be dismissed.

Conclusions of Law

30 The Respondent Union did not violate the National Labor Relations Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended²

35 ORDER

The complaint is dismissed.

40 Dated, Washington, D.C., November 25, 2009.

45

George Carson II
Administrative Law Judge

² If no exceptions are filed as provided by Sec. 102.46 of the Board’s Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.